IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11628 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISMAILSHA REHMANSHA DIWAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/02/2001

ORAL JUDGEMENT

#. This is yet another case where I am constrained to observe that detention order has been passed by the authorities only to have statistical datas thereof. Deliberately, lacunas appear to have been left out in the matter so that it may be easy for the petitioner to get

himself released from this detention by filing this petition.

#. Not only this, after filing of this petition also, the respondents have extended favour to the petitioner which is clearly borne out from the fact that they have not cared to file reply to the special civil application though more than sufficient time was available to their disposal.

#. Manifold contentions have been raised by learned counsel for the petitioner challenging the order of detention of the petitioner but as this petition deserves to be allowed only on one ground, it is not necessary to refer, discuss and record the findings thereon. In paragraph-10 of the special civil application, the petitioner states that despite of demand made by petitioner to supply copies of the statements of witnesses recorded u/s.161 of Cr.P.C. have not been supplied to him. The representation which has been filed by petition is there on the record of this petition at page No.20 and this grievance has also been made therein but the District Magistrate concerned has not cared even to respond to this representation. These copies of the documents demanded by petitioner are certainly vital documents and it is a case where the petitioner has been deprived of his valuable right of making effective representation against the detention order as conferred to him under Article 22(5) of the Constitution of India.

#. As a result of aforesaid discussion, this petition succeeds and the same is allowed and the order of detention of the petitioner dated 7.2.2001 is quashed and set aside. The petitioner - Ismailsha Rehmansha Diwan, the detenu, at present at Bhavnagar District Jail, Bhavnagar, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The State of Gujarat is directed to pay cost of the petition to the petitioner which is quantified at Rs.3,000/=.

#. The learned counsel for the respondents strongly opposed awarding of the cost of this litigation to the petitioner by the court. Firstly, it is the discretion of the court to award the costs. So there is little scope for raising such objection by the learned counsel for the respondents. Otherwise also, I consider it to be a fit case to award the costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.3,000/= as fees from the petitioner to provide him his professional services in this case and this amount has been paid by the petitioner

to him. It is the question of the personal liberty and the petitioner is free to engage any advocate of his own choice. Nobody can compel the petitioner nor any law requires that he has to engage an advocate who charges lesser fees. The advocate is a professional and if any body approaches him to provide his professional services he can charge his own fees. This is not the only money which has been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses for filing of the petition but the counsel for the petitioner has not produced any bill of expenses and as such that amount cannot be awarded to the petitioner.

#. The State of Gujarat, an impersonal machinery, is not at fault in the matter. It's only fault is that it has no control over its officers nor it takes its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officers, reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer is a people's money. This money has to be paid to the petitioner by the State of Gujarat not for its own fault, but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter.

#. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing the reply in the matter on the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and that amount is recovered from those officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat has to suffer monetary loss, its House may not be corrected.

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(sunil)